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IN THE

Supreme Court of the United States

No. 339

OCTOBER TERM, 1962

TRANSCONTINENTAL GAS PIPE LINE CORPORATION,
Petitioner,

v.

BROOKLYN UNION GAS COMPANY, ET AL.,
Respondents.

BRIEF OF RESPONDENT SOCONY MOBIL OIL COMPANY, INC., IN OPPOSITION TO CONDITIONAL CROSS-PETITION FOR WRIT OF CERTIORARI

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September 5, 1962

BORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

TOPICAL INDEX

	Page
COUNTER-STATEMENT	1
COUNTER-QUESTION PRESENTED	3
ARGUMENT	3
CONCLUSION	5

CASES

Magnum Import Co. v. Coty (1923) 262 U.S. 159	4
Rice v. Sioux City Mem. Park Cemetery, Inc. (1955) 349 U.S. 70	4

RULES

Rules of the Supreme Court of the United States: Rule 19	3, 4, 5

OTHER AUTHORITIES

Mr. Chief Justice Hughes, Letter to Senator Burton K. Wheeler, Senate Rep. No. 711, 75th Cong. 1st Sess., p. 38	4, 5

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COUNTER-STATEMENT

This Petition seeks to obtain a direction for judgment over against Socony Mobil Oil Company, Inc. (Mobil) upon the condition that this Court should award Brooklyn Union Gas Company, et al (Brooklyn Union), plaintiffs below, a judgment against Petitioner in No. 344, this term.

The claim, (Pet. p. 6), that Petitioner's "Third Motion" for summary judgment (R. 598) was not reached or considered by the trial court is erroneous. The trial court in

twice granting Petitioner's "Second Motion" (R. 597) for summary judgment against Brooklyn Union and twice denying Brooklyn Union's "Second Motion" (R. 635), for summary judgment against Transco (R. 659, App. 18a-19a, 17a; R. 665, App. 24a) necessarily denied Petitioner's "Third Motion." By the trial court's action Petitioner won a final judgment on the merits of Brooklyn Union's claim against it, together with its costs (R. 786).

Petitioner was appellant below in Cause No. 18944, but its appeal was limited to the refusal of the trial court to grant compound interest on the judgment awarded Petitioner against Mobil.* Petitioner so concedes. (Pet. p. 5) It did not perfect an appeal to the "refusal" of the trial court either to consider or grant its "Third Motion", or to its refusal to award the relief now sought in the instant petition for certiorari.

Brooklyn Union, as Appellants in Cause No. 18943 below, did appeal from the refusal of the trial court to grant their "Second Motion" (R. 635) against Petitioner. Petitioner, however, in its Appellee's brief devoted itself wholly to contending that the trial court was correct both in denying Brooklyn Union's "Second Motion" against Petitioner, and in granting Petitioner's "Second Motion" against Brooklyn Union and entering a judgment final in favor of Petitioner.

It nowhere presented or sought to reserve the claim, now posed by this Petition. Apparently, the exclusion of the instant claim from its appeal in No. 18944, and also from

* The only specification of error which Petitioner, as appellant below, advanced (p. 2, Appellant's Brief in No. 18944, 5 Cir.), reads:

> "The District Court erred in restricting the interest to be paid by Mobil and Ohio to interest on the principal amount due from the date of each payment by Transco to Mobil and Ohio, rather than entering judgment for a lump sum including principal and interest to the date of judgment, the entire judgment to bear interest."

its contentions in Brooklyn Unions appeal in No. 18943, was deliberate on Petitioner's part. It constituted abandonment of such claim. In Brooklyn Union's appeal, No. 18943, Petitioner prevailed, and the Court below affirmed the judgment of the trial court. (R. 845). Its appeal on compound interest, it lost (R. 846), and that question is not brought forward here.

It is thus clear that the point attempted to be tendered by this petition was not presented for decision, or error thereon assigned to the Court of Appeals, so that the judgment of the trial court on that point is long since final. Thus the Court of Appeals did not consider or render any decision upon such point. It follows that that Court's judgment and decision constitutes no basis for this Petition for Certiorari.

COUNTER-QUESTION PRESENTED

Whether this petition, which is not addressed to any decision of the Court of Appeals and which does not assert any conflict of decision or advance an important question of public interest within the purview of Rule 19 of this Court, presents anything to invoke this Court's discretion to hear and determine.

ARGUMENT

Petitioner's additional claim for judgment over against Mobil is said to be predicated upon its "Third Motion" for summary judgment (R. 598); but it did not appeal from a claimed refusal of the trial court to consider or grant its Third Motion, or to grant a judgment over against Mobil. Instead, it stood upon a judgment in its favor. The Court of Appeals thus was never called upon to consider whether the trial court did refuse to consider or grant the "Third

Motion" and whether such refusal was error. Its jurisdiction thereabout thus was never invoked, and this Petition is not addressed to any judgment or decision of the court below in that respect.

In the face of this failure to appeal or procure a review by the Court of Appeals on the point now attempted to be presented, Petitioner solemnly declares: "Transco is entirely satisfied with the judgments of the District Court and Court of Appeals" (Pet. p. 5).

The Petition advances nothing which meets the governing considerations established by Rule 19 of this Court.** It does not pretend to claim that on the point presented the Court of Appeals below has rendered a decision in conflict with that of another court of appeals; "or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this Court;" or that the point presented involves any question of importance which it is in the public interest to have decided by this Court of last resort. See *Magnum Import Company* v. *Coty* (1923) 262 U. S. 159, 163; *Rice* v. *Sioux City Memorial Park Cemetery, Inc.* (1955) 349 U. S. 70, 73-4.

The lack of merit in the instant petition is thus aptly summarized:

> "If further review is to be had by the Supreme Court it must be because of the public interest in the questions involved. That review, for example, should be

** Mobil respectfully refers the Court to its brief in opposition in No. 344, October Term 1962, styled Brooklyn Union Gas Company, et al. v. Transcontinental Gas Pipe Line Corporation. The demonstration there of no compliance with the requirements of Rule 19, and the entire lack of substance in Brooklyn Union's cause of action against Transco, to which Transco's Third Motion originally was addressed, is equally apropos here.

for the purpose of resolving conflicts in judicial decisions between different circuit court of appeals or between circuit courts of appeals and State courts where the question is one of State law; or for the purpose of determining constitutional questions or settling the interpretation of statutes; or because of the importance of the questions of law that are involved. *Review by the Supreme Court is thus in the interest of the law, its appropriate exposition and enforcement, not in the mere interest of the litigants.*" (From letter of Chief Justice Hughes to Senator Burton K. Wheeler, Senate Report No. 711, 75th Cong., 1st Sess., p. 38) (Emphasis added)

CONCLUSION

By the foregoing, it appears that both courts below acted properly and in accordance with the law applicable. In our submission, no special or important reasons or any conflicts of decision required by Rule 19 appear which call for this Court's review; whereby this Petition for Certiorari should be in all things denied, and it is respectfully so prayed.

Respectfully submitted,

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